

~~Case 2:15-cr-04268-JB Document 1966 Filed 03/23/18 Page 2 of 61~~

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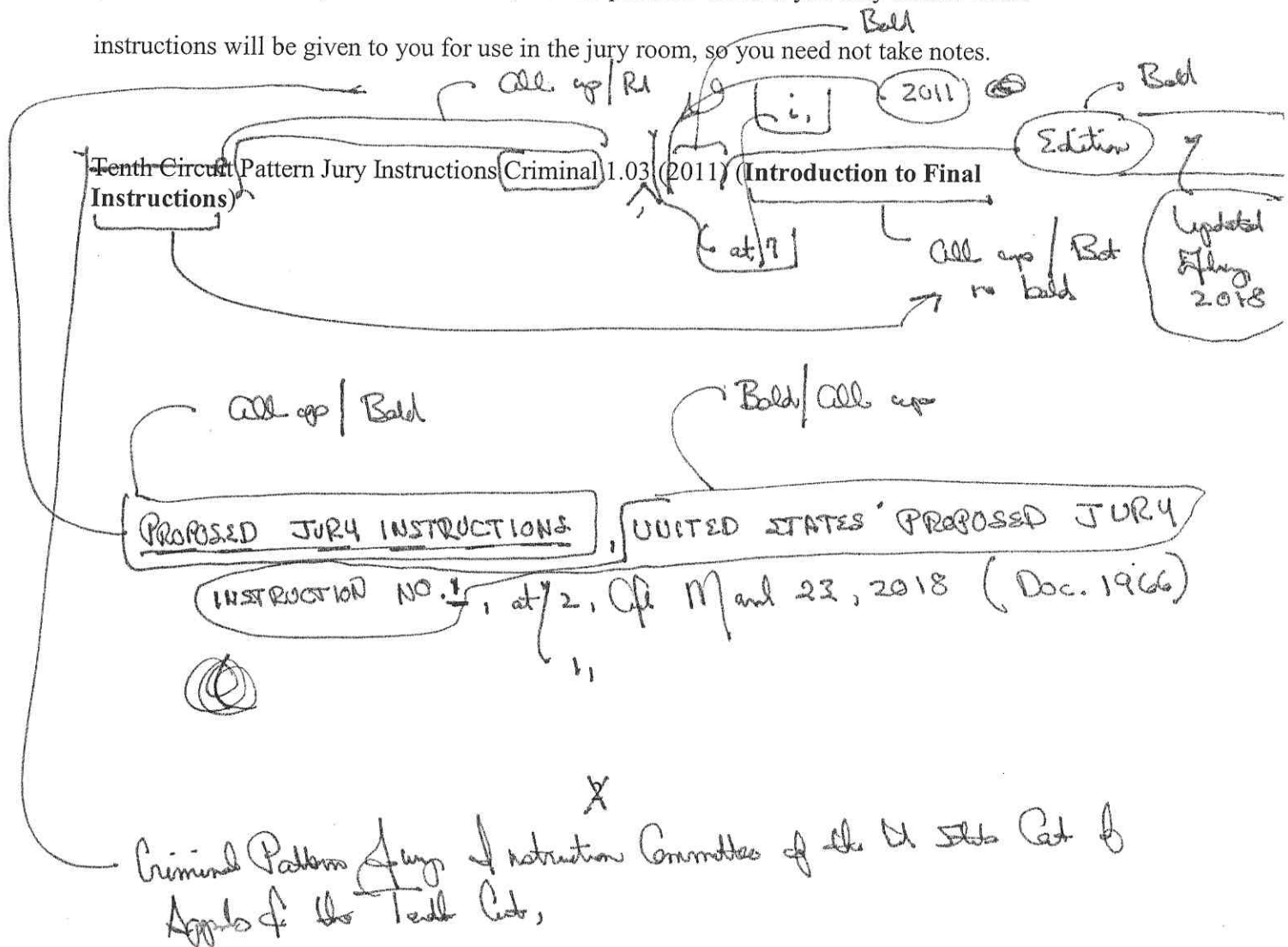
UNITED STATES' PROPOSED JURY INSTRUCTION NO. ~~X~~

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges, you are the other.

I am the judge of the law. You, as jurors, are the judges of the facts. I presided over the trial and decided what evidence was proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

In explaining the rules of law that you must follow, first, I will give you some general instructions which apply in every criminal case ~~for~~ ^{for example}, instructions about burden of proof and insights that may help you to judge the believability of witnesses. Then I will give you some specific rules of law that apply to this particular case and, finally, I will explain the procedures you should follow in your deliberations, and the possible verdicts you may return. These instructions will be given to you for use in the jury room, so you need not take notes.



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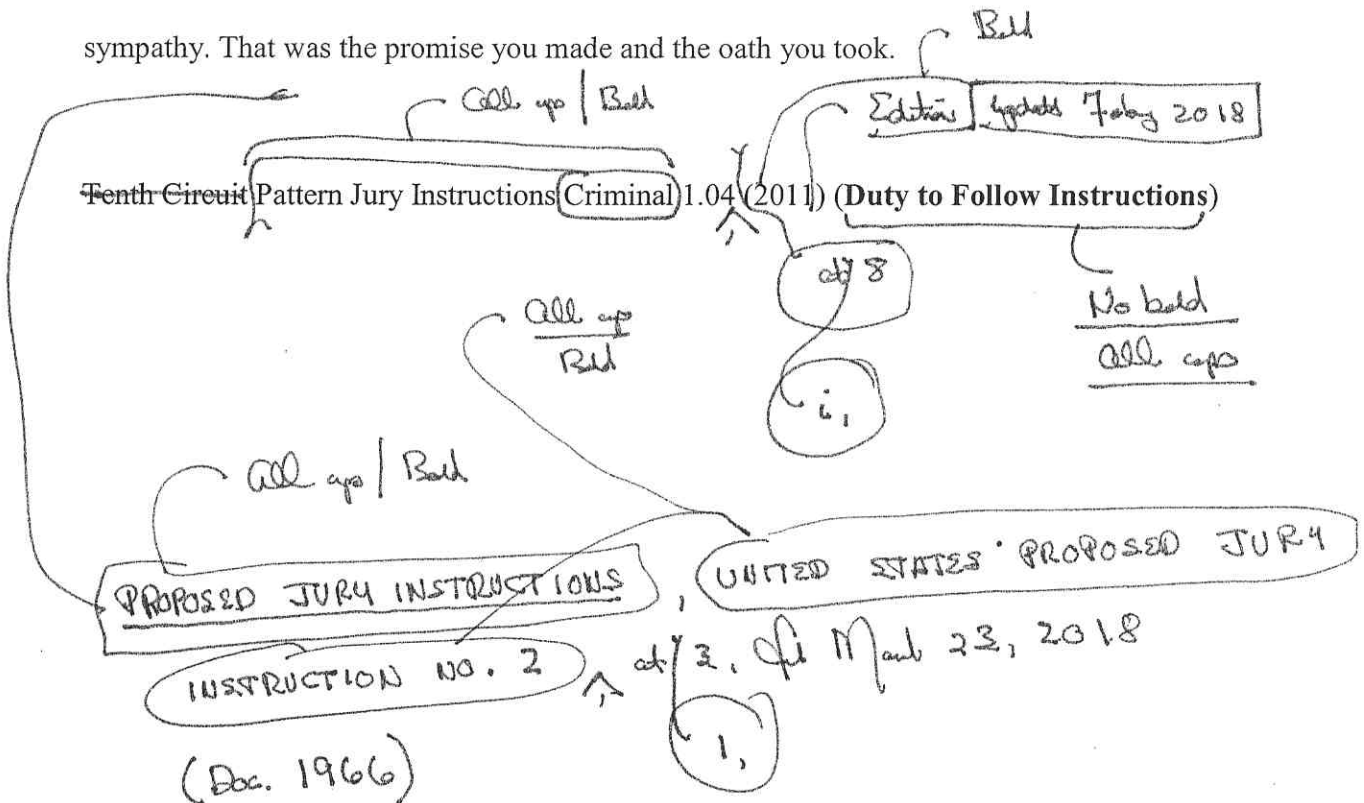
~~UNITED STATES PROPOSED JURY INSTRUCTION NO. 7~~

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You, as jurors, are the judges of the facts. But in determining what actually happened that is, in reaching your decision as to the facts, it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences. However, you should not read into these instructions or anything else I may have said or done, any suggestion as to what your verdict should be. That is entirely up to you.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took.



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UNITED STATES' PROPOSED JURY INSTRUCTION NO. 3

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The government has the burden of proving defendants Joe Lawrence Gallegos, Edward Troup, Billy Garcia, Allen Patterson, Christopher Chavez, Arturo Arnulfo Garcia, Andrew Gallegos, and ~~Shauna Gutierrez~~ guilty beyond a reasonable doubt. The law does not require a defendant to prove his or her innocence or produce any evidence at all. The government has the burden of proving a defendant guilty beyond a reasonable doubt, and if it fails to do so, you must find that defendant not guilty.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A reasonable doubt is a doubt based on reason and common sense after careful and impartial consideration of all the evidence in the case. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Tenth Circuit Pattern Jury Instructions Criminal 1.05 (2011) (Presumption of Innocence - Burden of Proof/Reasonable Doubt)

Mr. Joe Gallegos,
Mr. Troup, Mr.
Billy Garcia, Mr.
Patterson, Mr. Chavez,
Mr. Arturo Garcia,
and/or Mr. Andrew Gallegos

Mr. Joe Gallegos,
Mr. Troup's, Mr.
Billy Garcia's, Mr.
Patterson's, Mr. Chavez,
Mr. Arturo Garcia's,
at Mr. Andrew Gallegos'

Mr. Patterson,
Mr. Chavez's
Mr. Arturo
Garcia,
at Mr.
Andrew
Gallegos

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PROPOSED JURY INSTRUCTIONS

UNITED STATES' PROPOSED JURY INSTRUCTION

NO. 3, at 6.1.4, Full March 23, 2018 (Doc. 1966)

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~~UNITED STATES PROPOSED~~ JURY INSTRUCTION NO. ~~X~~

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath, the exhibits that I allowed into evidence, the stipulations that the lawyers agreed to, ~~and the facts that I have judicially noticed.~~ (And)

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

During the trial, I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

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Tenth Circuit Pattern Jury Instructions (Criminal) 1.06 (2011)

(Evidence Defined)

Criminal Pattern Jury
Instructions of the 10th
Circuit of the 10th
Circuit, Fed. Cir.
Ct.,

PROPOSED JURY INSTRUCTIONS

UNITED STATES

PROPOSED JURY INSTRUCTION NO. 4

-X- at 15, filed March 23, 2018 (Doc. 1966) (modified)

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~~UNITED STATES' PROPOSED JURY INSTRUCTION NO. X~~

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There are, generally speaking, two types of evidence from which a jury may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of a chain of facts which point to the existence or non-existence of certain other facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence. The law simply requires that you find the facts in accord with all the evidence in the case, both direct and circumstantial.

While you must consider only the evidence in this case, you are permitted to draw reasonable inferences from the testimony and exhibits, inferences you feel are justified in the light of common experience. An inference is a conclusion that reason and common sense may lead you to draw from facts which have been proved.

By permitting such reasonable inferences, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in this case.

United States v. DeLeon, et al (15-4268), Trial 1, Jury Instruction No. 6

Criminal Pattern Jury Instructions Committee of the United States Ct of Appeals & 11th Circuit, CRIMINAL PATTERN JURY INSTRUCTIONS 1.07, at i, 13 (2011 Edition) updated February 2018

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~~UNITED STATES'~~

~~PROPOSED JURY INSTRUCTION NO. 5~~, at @ 1.

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6, of 11 and 23, 2016 2018 (Doc. 1966)

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Mr. Ace Vallegas, Mr. Tracy, Mr. Billy Garcia, Mr. Patterson, Mr. Chavez, Mr. Arturo Garcia, and Mr. Andre Vallegas

UNITED STATES' PROPOSED JURY INSTRUCTION NO. ~~X~~

I remind you that it is your job to decide whether the government has proved the guilt of each defendant beyond a reasonable doubt. In doing so, you must consider all of the evidence.

This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses [including the defendant] who testified in this case. You should think about the testimony of each witness you have heard and decide whether you believe all or any part of what each witness had to say, and how important that testimony was. In making that decision, I suggest that you ask yourself a few questions: Did the witness impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome in this case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he/she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? When weighing the conflicting testimony, you should consider whether the discrepancy has to do with a material fact or with an unimportant detail. And you should keep in mind that innocent misrecollection like failure of recollection is not uncommon.

[The testimony of the defendant should be weighed and his credibility evaluated in the same way as that of any other witness.]

[The defendant did not testify and I remind you that you cannot consider his decision not to testify as evidence of guilt. I want you to clearly understand, please, that the Constitution of

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the United States grants to a defendant the right to remain silent. That means the right not to testify or call any witnesses. That is a constitutional right in this country, it is very carefully guarded, and you should understand that no presumption of guilt may be raised and no inference of any kind may be drawn from the fact that a defendant does not take the witness stand and testify or call any witnesses.]

In reaching a conclusion on particular point, or ultimately in reaching a verdict in this case, do not make any decisions simply because there were more witnesses on one side than on the other.

Tenth Circuit Pattern Jury Instructions Criminal

1.08 (2011)

(Credibility of Witnesses) (advised)

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Exhibit Updated July 2018

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Civil Pattern Jury Instructions
Committee of the 5th
Circuit of Appeals of the
Tenth Circuit,

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Mr. Joe Valles, Mr. Traug,
Mr. Billy Garcia, Mr. Patterson,
Mr. Chavez, Mr. Arturo Garcia,
and Mr. Andrew Valles

PROPOSED JURY INSTRUCTIONS

UNITED STATES' PROPOSED

JURY INSTRUCTION NO. 6

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23, 2018 (Dec. 1966) (modified)

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UNITED STATES' PROPOSED JURY INSTRUCTION NO. X

You have heard the testimony of [name of witness]. You have also heard that, before this trial, he made a statement that may be different from his testimony here in court.

✓ This earlier statement was brought to your attention only to help you decide how believable his testimony in this trial was. You cannot use it as proof of anything else. You can only use it as one way of evaluating his testimony here in court.

Tenth Circuit Pattern Jury Instructions Criminal 1.10 (2011)

(Impeachment by Prior

Edition by dated Feb 2018

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*Criminal Pattern for
Federal Courts of the
1st Cir. of Appeals of
the Tenth Cir.*

PROPOSED JURY INSTRUCTION

UNITED STATES'

PROPOSED JURY INSTRUCTION NO. 67

at

*1, 9, Cfr. March 23, 2018
(Doc. 1966) (modified)*

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